



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 2, 1991

Ms. Georgia Flint
Acting Commissioner
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR91-601

Dear Ms. Flint:

Your predecessor in office asked whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. This request was assigned ID# 13874.

The Texas Department of Insurance (the department) has received a request for information relating to Bell Indemnity Company, Inc. Specifically, the requestor seeks:

- 1) Any and all reports submitted by the Conservator in regard to Bell Indemnity Company, Inc.;
- 2) Any and all documents referring to Rios, Bailey, Bell & Saarinen;
- 3) Any and all reports regarding the underlying case, Bell Indemnity vs. Deborah Hull.

The department claims that all of the requested information is excepted from required public disclosure by section 3(a)(3) of the Open Records Act. The department also claims that parts of the requested information are excepted from required public disclosure by sections 3(a)(1), 3(a)(7), 3(a)(11), and 3(a)(12).

Previous open records decisions issued by this office resolve your request. Open Records Decision No. 551 (1990) held that section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and when the

information relates to that litigation. Section 3(a)(3) requires parties to a lawsuit to seek relevant information through the normal process of discovery. *Id.* at 4. The litigation exception may be applied to records relating to a contested case before an administrative agency. Open Records Decision No. 368 (1983).

The department advises us that Bell Indemnity Company has been placed in conservatorship pursuant to an order of the Commissioner of Insurance (the commissioner). See generally Attorney General Opinion JM-1125 (1989). The department also states that when a company is placed in supervision, the Conservation Activity of the Department of Insurance anticipates and prepares for the possibility of various hearings, including the compliance hearing automatically set at the time the commissioner issues a Supervisory Order. On the basis of these assertions, we conclude that litigation is reasonably anticipated. Furthermore, having reviewed the documents submitted to us, we conclude that the reports sought in the first request relate to that litigation and thus may be withheld from required public disclosure by section 3(a)(3) of the Open Records Act. The department also has demonstrated that the remainder of the items requested relate to anticipated litigation, thereby invoking the protection of section 3(a)(3). Please note that this ruling applies only for the duration of the litigation at issue and only for information that has not already been disclosed by the discovery process, by court order, or by other means. Indeed, it is very likely that some of the requested information, particularly information requested in items 2 and 3, already has been disclosed by Bell Indemnity Company. Because we resolve this issue under section 3(a)(3), we need not address the applicability of sections 3(a)(1), 3(a)(7), 3(a)(11), and 3(a)(12) at this time.

As case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-601.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KO/GK/lcd

Ref.: ID#s 13874, 14016

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